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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/569,300

02/23/2006

Sadao Nishibori

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2491

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07/22/2008

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EXAMINER

BUTLER, PATRICK NEAL

ART UNIT

PAPER NUMBER

1791

MAIL DATE

DELIVERY MODE

07/22/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/569,300	Applicant(s) NISHIBORI ET AL.	
	Examiner Patrick Butler	Art Unit 1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 4-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20080122 and 20060223</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election of Group I, Claims 1-3, in the reply filed on 21 April 2008 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 4-12 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Information Disclosure Statement

The information disclosure statement filed 23 February 2006 and 22 January 2008 fail to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. They have been placed in the application file, but the information referred to therein have not been considered. Specifically, within the IDS submitted 23 February 2006, the two references cited were provided in copies with only odd numbered pages. Within the IDS submitted 22 January 2008, RU 2006109576 was not provided. Instead, a non-patent literature document of an Office Action within RU 2006109576 was provided.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitations "the male die" and "the female die" in line 12 of Claim 1. There is insufficient antecedent basis for these limitations in the claim. Specifically, since line 9 does not require a male die or a female die, the instances of "the male die" and "the female die" in line 12 lacks antecedent basis. Claims 2 and 3 are rejected via their dependency. For purposes of examination, the Examiner assumes that the claim requires heating a male die and a female die.

With respect to Claim 1, the recitation of "a male die or a female die, or a female die and/or the three-dimensional structure" in lines 9 and 10 is not clear what is necessarily required or not required. Is heating the three-dimensional structure sufficient to while not having a male die and also not having a female die? Claims 2 and 3 are rejected via their dependency. For purposes of examination, the Examiner assumes that the claim requires heating a male die and a female die.

With respect to Claim 1, the term "short filaments" in line 7 is a relative term which renders the claim indefinite. The term "short" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Moreover, the term "short filaments" is unclear since a filament is considered to be a fiber with a long length, such as a fiber 100 times its diameter or a fiber

Art Unit: 1791

hundreds or meters long, and since the term staple is applied to short fibers, such as ones less than a meter long (see Smith et al., *Textiles in Perspective*, page 14, second paragraph in The Modern Industry section; page 15, fig. 1.6; page 64, first paragraph in Requirements of Textile Fibers section; and page 418, **filament**). Claims 2 and 3 are rejected via their dependency. For purposes of examination, the Examiner assumes the requirement of "filament" absent the limitation of "short."

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Ebihara et al. (JP 08-061413 with JPO abstract and machine translation relied upon).

With respect to Claim 1, Ebihara teaches making a three-dimensional net structure cushion body of polyester loops (producing a cushion material composed of a resin molded article having a spring structure; forming a three-dimensional structure with voids at a predetermined bulk density by contacting, entwining, and gathering adjacent ones of random loops or curls of solid and/or hollow continuous filaments made from a thermoplastic resin) (see Abstract) by heating the mold and network structure to compressively bond the network structure (heating a male die and a female die to a temperature sufficiently high to soften the three-dimensional structure; allowing the male die to intimately contact the female die so as to tightly compress the three-

dimensional structure) (see [0025] - [0027]) and allowing the mold and cushion to cool (hardening the three-dimensional structure by cooling) (see [0027]).

With respect to Claim 3, Ebihara teaches attaching a facing 4 by having it between the mold and polyester loops, which would necessarily act as a male mold to the polyester loops (a base to which the resin molded article with a spring structure is attached serves as a male die, and the male dies is allowed to intimately contact with a female die so as to tightly compress the three dimensional structure) (see abstract, [0027], and figs. 1 and 4). Ebihara teaches allowing the mold and cushion to cool (the three-dimensional structure is hardened by cooling) (see [0027]).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ebihara et al. (JP 08-061413 with JPO abstract and machine translation relied upon) as applied to claim 1 above, and further in view of Jang (US Patent No. 5,234,638).

With respect to Claim 3, Ebihara teaches a method of making a cushion material of a certain size as previously described but does not expressly teach trimming the edge with a heat cutter.

Jang teaches cutting a non-woven material's edges to size by using a heat cutter (superfluous edges protruded from the three-dimensional structure into the stroke

Art Unit: 1791

between the two mating dies are cut with a heat cutter so that the edges are cut out and open ends of edge filaments are fused together) (see col. 1, lines 36-43).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Jang's cutting with the cushion body of Ebihara in order to form a product cut to desired size with sealed edges (see Jang, col. 1, lines 36-43).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick Butler whose telephone number is (571) 272-8517. The examiner can normally be reached on Mon.-Thu. 7:30 a.m.-5 p.m. and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on (571) 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1791

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/P. B./

Examiner, Art Unit 1791

/Monica A Huson/

Primary Examiner, Art Unit 1791